

**REMARKS**

Claims 1–16 are pending in the present application.

Claims 1–2, 6, 9–10 and 14 were amended herein.

Claims 6–7 and 14–15 were objected to as being dependent upon a rejected base claims, but were indicated to be allowable if rewritten in independent form including all limitations of the base claim and any intervening claims. Claims 6 and 14 have been rewritten in independent form, and are now believed to be allowable. Claims 7 and 15 depend from claims 6 and 14, respectively, and are similarly believed to be allowable.

Reconsideration of the claims is respectfully requested.

**35 U.S.C. § 102 (Anticipation)**

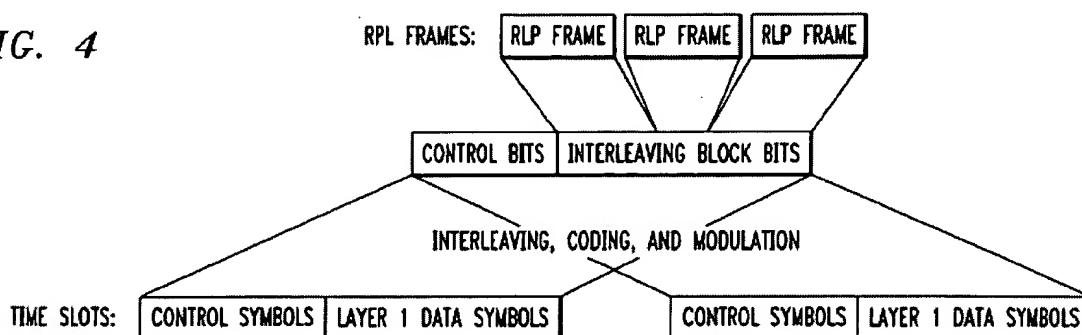
Claims 1–5 and 9–13 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,389,066 to *Ejzak*. This rejection is respectfully traversed.

A claim is anticipated only if each and every element is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim. MPEP § 2131 at p. 2100-76 (8<sup>th</sup> ed. rev. 4 October 2005).

Independent claims 1 and 9 each recite that different modulation configurations are employed for different data blocks within a single TDD frame: that is, the controller causes the RF modem “to transmit downlink data to a first wireless access device in a first data block within a TDD frame using a first modulation configuration and to transmit downlink data to a second wireless access device in a second data block within said TDD frame using a different second modulation

configuration.” Such a feature is not found in the cited reference. While the present application utilizes “data block” to refer to a portion of a TDD frame, *Ejzak* refers to portions of the interleaved block as “RLP frames”:

**FIG. 4**



*Ejzak*, Figure 4. The “TDD frame” recited in the claims of the present application thus corresponds to the interleaved block in *Ejzak*, while the “data block” recited in the claims of the present application corresponds to the RLP frames in *Ejzak*.

*Ejzak* does not teach modulating the RLP frames within a given interleaved block using different formats, but instead teaches modulating different interleaved blocks using different formats. Thus, *Ejzak* teaches at most only the equivalent of modulating different TDD frames (as recited in the claims of the present application) in different modulation formats, not modulating different data blocks (RLP frames) within a single TDD frame using different modulation formats, as recited in the claims of the present application.

Therefore, the rejection of claims 1–5 and 9–13 under 35 U.S.C. § 102 has been overcome.

**35 U.S.C. § 103 (Obviousness)**

Claims 8 and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Ejzak*. This rejection is respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142, p. 2100-133 (8th ed. rev. 4 October 2005). Absent such a *prima facie* case, the applicant is under no obligation to produce evidence of nonobviousness. *Id.*

To establish a *prima facie* case of obviousness, three basic criteria must be met: First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *Id.*

As noted above, independent claims 1 and 9, from which claims 8 and 16 depend, include limitations not found in the cited reference.

Therefore, the rejection of claims 8 and 16 under 35 U.S.C. § 103 has been overcome.

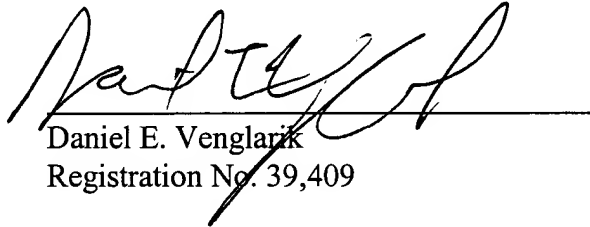
If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *dvenglarik@munckbutrus.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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